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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

U.S. BANK NATIONAL ASSOCIATION,

Plaintiff,

v.

EEL RIVER INVESTMENT COMPANY, et
al,

Defendant.

No. C04-5623 RBL

ORDER

THIS MATTER comes on before the above-entitled Court upon Defendant Michael Sullivan’s Motion to Dismiss and upon Plaintiff’s Motion for Leave to File Second Amended Complaint.

Having considered the entirety of the records and file herein, the Court rules as follows:

This case alleges violations of Washington State Securities Act, breach of contract, breach of warranties, negligent misrepresentation, fraud, and in the proposed second amended complaint seeks to pierce the corporate veil of several of the defendants. In brief, plaintiff, as trustee of certain funds and as the assignee of the rights of the two original investors, is suing Eel River Investment Company (“ERIC”), a Washington corporation, the seller of certain shares, principals and directors of the seller, the seller’s law firm, the seller’s re-marketing agent, and the sellers of a separate

1 investment wherein plaintiff was directed to deposit the funds from the shares.

2 Defendant Michael Sullivan is an Arkansas resident who is a director of ERIC and was a Vice
3 President of defendant Sterne Agee & Leech, Inc. He has moved to dismiss plaintiff's complaint as
4 against him for lack of personal jurisdiction. He alleges, by way of a declaration that he has no
5 contacts with the State of Washington, and the only act he performed as a director of ERIC was to
6 sign documents mailed to him in Arkansas indicating his consent to corporate action. Plaintiff seeks
7 to impose jurisdiction upon Mr. Sullivan under a director, or controlling authority theory pursuant to
8 RCW § 21.20.430(3). In the alternative, plaintiff seeks more time to complete discovery before the
9 Court rules on the motion. Considering that the defendant, Mr. Sullivan, as of the date of plaintiff's
10 response to the motion, had not responded to plaintiff's discovery requests, the Court will re-note
11 the motion for November 4, 2005 (the fourth Friday after the close of discovery). If the parties
12 agree, they may contact the Court and note the motion for an earlier date.

13 Plaintiff has moved to file a second amended complaint which adds a new party, Eel River
14 Lumber Products, LLC, ("ERLP") and seeks to add a new claim against current defendants ERIC,
15 ERAC, and the new defendant ERLP. The new claim seeks to pierce the corporate veil of the
16 defendant entities. The defendants object to the proposed amendment arguing that the amended
17 claim would prejudice them (by forcing them to file a motion for summary judgment on the claim)
18 and would be futile (because the summary judgment would be granted).

19 Fed.R.Civ.P. 15(a) provides that "leave [to amend] shall be freely given when justice so
20 requires." Amendment should be denied only when the moving party is acting in bad faith, in a
21 dilatory fashion, when undue prejudice would result or when the amendment would be futile. *Moore*
22 *v. Kayport Package Esp., Inc.*, 885 F.2d 531, 538 (9th Cir. 1989). There is no evidence that the
23 plaintiff is acting in bad faith or in a dilatory manner in moving to amend the complaint. The
24 defendants' argument against amendment is in essence a motion for summary judgment on the claim.
25 The Court is asked to rule on the merits or lack thereof of plaintiff's claim without the benefit of full

1 briefing on the issue. The Court declines to so rule. Therefore, it is hereby

2 ORDERED that Defendant Sullivan's Motion to Dismiss (Dkt. #58) is re-noted for
3 November 4, 2005; and it is further

4 ORDERED that Plaintiff's Motion to Amend (Dkt. #68) is GRANTED. The clerk shall file
5 plaintiff's Second Amended Complaint which is attached to the Declaration of Thuy Nguyen Leeper
6 (Dkt. #69) as Exhibit B.

7 The clerk of the court is instructed to send uncertified copies of this Order to all counsel of
8 record.

9 DATED this 18th day of MAY 2005.

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11 
12 RONALD B. LEIGHTON
13 UNITED STATES DISTRICT JUDGE
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